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IN THE

Supreme Court of the United States

October Term, 1971.

No. 71-1020.

PHILADELPHIA CHEWING GUM CORPORATION,
Petitioner,

v.

SOMPORTEX LIMITED, BREWSTER LEEDS & CO., INC. and M. S. INTERNATIONAL, INC.,
Respondents.

BRIEF IN OPPOSITION ON BEHALF OF SOMPORTEX LIMITED.

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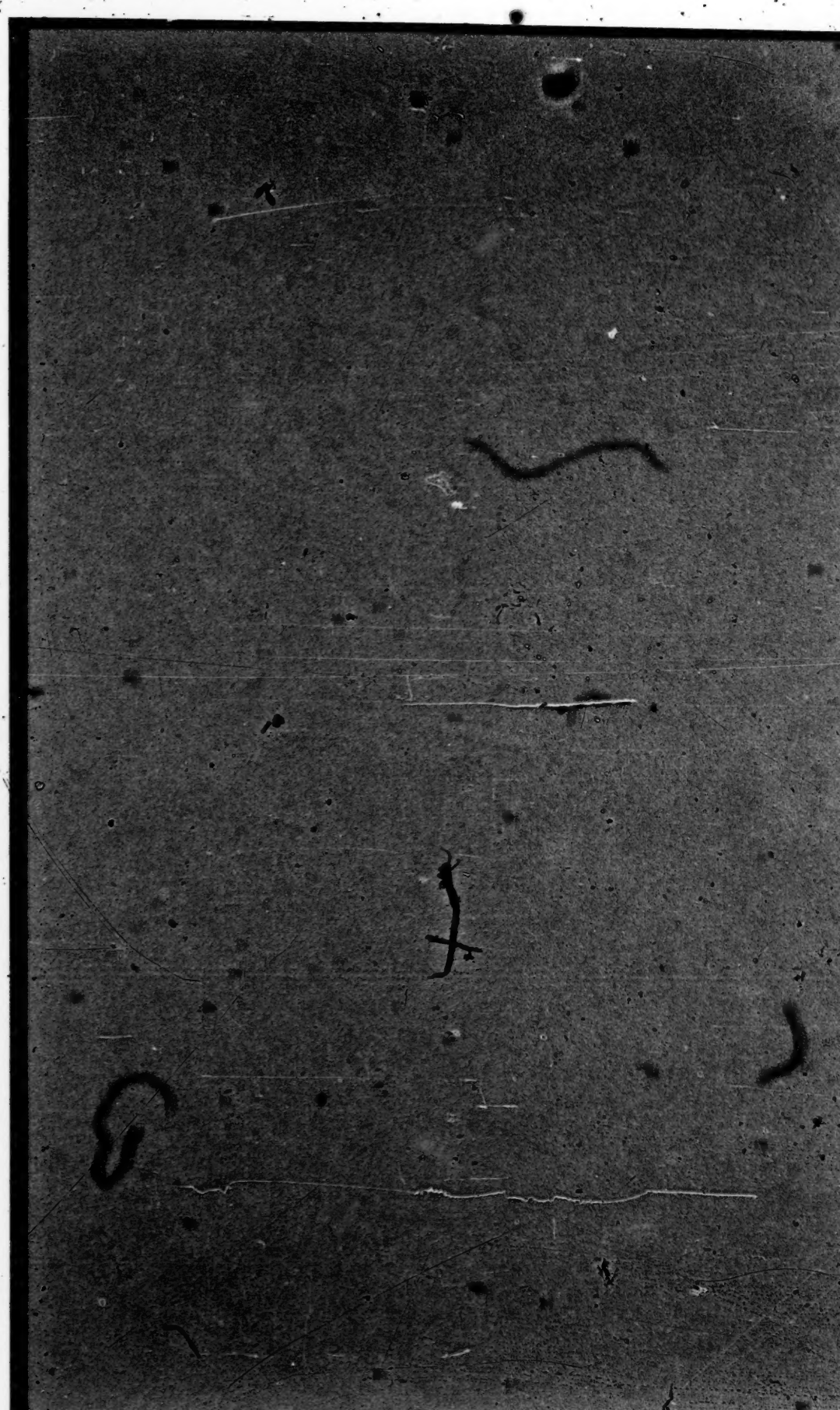

STATEMENT OF THE CASE.

This case arises under the diversity jurisdiction of the federal courts. Somportex Limited, an English corporation, brought suit in the United States District Court for the Eastern District of Pennsylvania seeking enforcement of an English judgment against Philadelphia Chewing Gum Corporation. After extensive briefing and oral argument the District Court granted summary judgment in favor of Somportex Limited.

Philadelphia Chewing Gum Corporation appealed this decision to the United States Court of Appeals for the Third Circuit. After briefs were filed the Court of Appeals granted oral argument. The Court of Appeals rendered a decision affirming the District Court.

Philadelphia Chewing Gum Corporation then filed a petition for a writ of certiorari.

ARGUMENT.

The petition should be denied for several reasons: the Court of Appeals correctly applied Pennsylvania law; no substantial federal question is presented; the decision is based to a great degree on the unique facts of the case and has no universal importance; the decision of the Court of Appeals is correct.

The Court of Appeals correctly applied the law of Pennsylvania. The suit involves a claim between an English citizen and a Pennsylvania citizen and arises under the diversity jurisdiction of the federal courts. The central issue in the case concerned the effect Pennsylvania would give to an English judgment rendered against a Pennsylvania citizen. Both the District Court and the Court of Appeals correctly applied the controlling Pennsylvania law as stated in *Christoff Estate,* 411 Pa. 419 (1963), cert. denied, 375 U. S. 965 (1964). The question of what effect Pennsylvania accords a foreign judgment is a purely state law question and the federal courts are bound by the decision of the highest Court of the State. After the decision in *Erie R. R. Co. v. Tompkins,* 304 U. S. 64 (1938) there is no authority for federal common law on the issue of comity in a case arising under diversity of citizenship jurisdiction. The petition makes no claim that the Court of Appeals misconstrued the decisional law of Pennsylvania. Respondent therefore asserts that there is no basis for a writ of certiorari.

The case raises no substantial federal question. Moreover, a review of the petition reveals no substantial federal question or important issue of law which requires review by the Supreme Court of the United States. Petitioner cites no contrary state or federal cases. The case concerns factual issues and the application of State law to those facts.

The decision below is to a large extent based on the unique facts of this case and therefore has no universal significance. As the petition underscores in its lengthy statement of the case, the facts involved are complicated. Simply stated petitioner, Philadelphia Chewing Gum Corporation, was served with process in a contract suit filed in England. Petitioner entered an appearance in the English Courts and unsuccessfully contested jurisdiction. Thereafter petitioner unsuccessfully attempted to withdraw its appearance. Petitioner, despite the warning of the English Court, then refused to continue in the lawsuit and a default judgment was entered. This suit was commenced to enforce the judgment. The legal basis of the jurisdiction of the English Court was examined by the District Court and the Court of Appeals and the issue was decided adversely to the petitioner. The judgment was therefore enforced by the District Court and the Court of Appeals under Pennsylvania Law. To the extent that the admittedly unique facts leading to the default judgment are involved in the decision, it is submitted by Respondent that they substantially reduce the universal impact of the case.

The decision of the Court of Appeals is correct. Petitioner does not assert that the Court of Appeals misapplied Pennsylvania Law. The attack appears to be that there was no determination of the factual and legal bases of the jurisdiction of the English Court. This argument was considered and correctly rejected by the Court of Appeals:

> Appellant's contention that the district court failed to make an independent examination of the factual and legal basis of the jurisdiction of the English Court at once argues too much and says too little. The reality is that the court did examine the legal

basis of asserted jurisdiction and decided the issue adversely to appellant.

Moreover, as the Court of Appeals pointed out, petitioner was granted and rejected an offer to fully litigate the issue of jurisdiction in the English Court after entering its appearance.

CONCLUSION.

For all the reasons stated above and those more fully set forth in the decision of the district court and the Court of Appeals the petition should be denied. No review is necessary for this case which arises under the diversity jurisdiction of the federal courts because the court below correctly applied state law as determined by the highest court of the State.

Respectfully submitted,

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